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2009 JUN -4 AM 10:23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY VWY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES W. CARPENTER,

Plaintiff,

vs.

GREEN TREE SERVICING LLC,

Defendant.

CASE NO. 09cv0828 BEN (AJB)

**ORDER GRANTING MOTION TO
DISMISS**

This case arises from the removal to this Court of Plaintiff's case filed in San Diego County Superior Court against Fidelity National Title Company ("Fidelity"); MortgageIT, Inc. ("MortgageIT"); and Green Tree Servicing LLC ("Green Tree"). MortgageIT filed a Notice of Removal on April 10, 2009. *See* No. 3:09-cv-0743-BEN-AJB, *Carpenter v. Fidelity Nat'l Title Co.* (S.D. Cal.). Green Tree separately filed a Notice of Removal on April 20, 2009, resulting in the instant action.

On April 27, 2009, Defendant filed a Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim or, in the Alternative, for a More Definite Statement. (Doc. No. 5.) Under Civil Local Rule 7.1(e)(2), Plaintiff's Opposition or Statement of Non-Opposition was due by May 25, 2009. Although represented by counsel, Plaintiff has filed no Opposition or Statement of Non-Opposition.¹ On June 1, 2009, Defendant filed a Reply noting the lack of any opposition filed by Plaintiff and

¹ Notably, although Plaintiff has filed no opposition to Green Tree's motion to dismiss, he did respond to MortgageIT's motion to dismiss in the companion case in No. 08-CV-0743.

1 requesting that the Court grant Defendant's motion pursuant to Civil Local Rule 7.1(f)(3)(c) without
2 leave to amend. Under Local Rule 7.1(f)(3)(c), an opposing party's failure to file the papers as
3 required by Civil Local Rule 7.1(e)(2) "may constitute a consent to the granting of [the] motion."

4 Therefore, on the basis of Plaintiff's failure to file an opposition or statement of non-opposition
5 to the motion as required by Local Rule, Defendant's motion is **GRANTED**, and the case is
6 **DISMISSED without prejudice**.

7 **IT IS SO ORDERED.**

8
9 DATED: 6/03/09


HONORABLE ROGER T. BENITEZ
UNITED STATES DISTRICT JUDGE